

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHARONDA BELL,

Plaintiff,

v.

ADDUS HEALTHCARE, INC.,

Defendant.

CASE NO. C06-5188RJB

ORDER GRANTING IN PART  
AND DENYING IN PART THE  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the court on the Defendant's Motion for Summary Judgment. Dkt. 127. The court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file herein and finds matters raised in the motions suitable for decision without oral argument.

**I. FACTUAL BACKGROUND**

Ms. Bell is a former employee of defendant Addus Healthcare, Inc. ("Addus"). The parties dispute the plaintiff's dates of employment. According to Ms. Bell, her employment began at the defendant's Oregon office as a home care aid in 2001 or 2002. In 2002, Ms. Bell transferred to the defendant's office in Vancouver, Washington to work as an office assistant and care giver. According to Addus, Ms. Bell's employment as a home care aid began on July 18, 2002, in the

1 Oregon office, and she was transferred to work as a home care aid and to occasionally work in  
2 the district office in Vancouver on June 21, 2003. Dkt. 76 at 3.

3 While in the Vancouver office, Ms. Bell worked to answer phones, answer questions of  
4 people who visited the office, and make appointments. Dkt. 76 at 4; Dkt. 86 at 9, 14. Ms. Bell  
5 was also available for dispatch to handle emergency care needs. Dkt. 86 at 14. Ms. Bell  
6 sometimes took rest breaks of no more than five minutes each when her schedule permitted. Dkt.  
7 76 at 5; Dkt. 86 at 9. She was unable to take a meal period unless another employee was present  
8 in the office because she could not leave the front desk unattended. Dkt. 76 at 5; Dkt. 86 at 10.  
9 The parties contest the frequency with which Ms. Bell took her breaks and whether she was paid  
10 for her breaks and missed meal periods. Dkt. 76 at 5; Dkt. 86 at 10.

11 Ms. Bell also worked in the field as a home care aid. Her duties included cooking, running  
12 errands, and providing personal care. Dkt. 76 at 6. Ms. Bell was required to record when she  
13 arrived at and left each client's home and to complete a checklist to indicate the tasks she  
14 performed. Dkt. 86 at 10. The time sheets were then signed by Ms. Bell's supervisor. *Id.* at 11.  
15 Ms. Bell contends that these time sheets were altered. *Id.* Ms. Bell's work hours varied. Dkt. 76  
16 at 7. She would sometimes work fewer than eight hours and, at other times, would work up to  
17 twelve hours. *Id.* According to Ms. Bell, Addus would not allow her to leave clients alone and  
18 was unable to take meal and rest periods while working in the field. Dkt. 86 at 12.

## 19 20 **II. PROCEDURAL BACKGROUND**

21 On April 14, 2006, Ms. Bell filed a complaint in this court alleging that Addus violated  
22 Washington and Oregon law by failing to provide rest breaks and meal periods, failing to pay  
23 overtime wages, failing to pay all wages when due upon termination, and breaching the duty of  
24 good faith and fair dealing. Dkt. 1. Ms. Bell seeks damages and a permanent injunction on behalf  
25 of herself and a class that has not yet been certified. *Id.* at 13, 25.

26 On February 22, 2007, Addus filed a Motion for Order Under Fed. R. Civ. P. 23(d) in re  
27 Communication with Putative Class Members. Dkt. 93. In her response to the motion, Ms. Bell  
28

1 moved for class certification. Dkt. 98. The court re-noted the Plaintiff's Cross Motion for Class  
2 Certification (Dkt. 98) so that briefing on the motion would proceed according to Local Rule CR  
3 7. Dkt. 105. On April 4<sup>th</sup>, 2007, the Court denied the Defendant's Motion for Order Under Fed.  
4 R. Civ. P. 23(d) in re Communication with Putative Class Members. Dkt. 109.

5 Pursuant to the parties' joint request and in order to facilitate mediation, the court stayed  
6 its ruling on the plaintiff's motion. Dkt. 112. The court twice re-noted the motion upon the  
7 request of Addus' new counsel. Dkt. 113; Dkt. 126. On June 28, 2007, Addus filed this Motion  
8 for Summary Judgment. Dkt. 127. The court re-noted the Defendant's Motion for Summary  
9 Judgment and the Plaintiff's Cross Motion for Class Certification (Dkt. 98), pursuant to the  
10 parties' request, so that the two motions could be considered together. Dkt. 162. All of these  
11 motions are now ripe for decision.

### 12 13 **III. DISCUSSION**

14 Summary judgment is proper only if the pleadings, depositions, answers to interrogatories,  
15 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as  
16 to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.  
17 P. 56©). There is no genuine issue of fact for trial where the record, taken as a whole, could not  
18 lead a rational trier of fact to find for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith*  
19 *Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant  
20 probative evidence, not simply "some metaphysical doubt."). *See also* Fed. R. Civ. P. 56(e).  
21 Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting  
22 the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth.  
23 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
24 *Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

25 The determination of the existence of a material fact is often a close question. The court  
26 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –  
27 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elec.*

1 *Serv., Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of  
2 the nonmoving party only when the facts specifically attested by that party contradict facts  
3 specifically attested by the moving party. The nonmoving party may not merely state that it will  
4 discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial  
5 to support the claim. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).  
6 Conclusory, non specific statements in affidavits are not sufficient, and missing facts will not be  
7 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990). And, "mere allegation  
8 and speculation do not create a factual dispute for purposes of summary judgment." *Nelson v.*  
9 *Pima Community College*, 83 F.3d 1075, 1081-82 (9th Cir. 1996).

10 Finally, once the moving party has raised an issue, based on the pleadings, the burden  
11 shifted to the nonmoving party to make a sufficient showing on all essential elements of her claim.  
12 See *Celotex Corp. V. Cartrett*, 477 U.S. 317, 323-325 (1985). In addition, "[i]t is not our task,  
13 or that of the district court, to scour the record in search of a genuine issue of triable fact. We rely  
14 on the nonmoving party to identify with reasonable particularity the evidence that precludes  
15 summary judgment." *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir.1995); see also  
16 *Guarino v. Brookfield Township Trustees*, 980 F.2d 399, 405 (6th Cir.1992) ("[The nonmoving  
17 party's] burden to respond is really an opportunity to assist the court in understanding the facts.  
18 But if the nonmoving party fails to discharge that burden -- for example, by remaining silent -- its  
19 opportunity is waived...").

20 In this case, Addus seeks summary judgment on multiple grounds. First, Addus argues  
21 that either (1) the Fair Labor Standards Act preempts Washington and Oregon law or (2) Ms. Bell  
22 is exempt from minimum wage, overtime, rest breaks, and meal period requirements under  
23 Washington and Oregon law. Dkt. 127 at 17. In the alternative, Addus moves for summary  
24 judgment separately on each of the following;

25 Second Claim for Relief: Failure to Provide Meal Periods in Washington

26 Third Claim for Relief: Failure to Provide Duty Free Meal Periods in Washington

27 Fourth Claim for Relief: Failure to Timely Pay Final Wages at Termination in  
28

Washington;

Sixth Claim for Relief: Permanent Injunction in Washington;

Seventh Claim for Relief: Failure to Pay Wages in Oregon;

Eighth Claim for Relief: Failure to Pay Minimum Wage in Oregon

Eleventh Claim for Relief: Failure to Pay for Missed Lunch Breaks in Oregon

Twelfth Claim for Relief: Breach of Contract for Failure to Provide Rest Breaks in Oregon;

Thirteenth Claim for Relief: Breach of Contract for Failure to Provide Meal Periods in Oregon;

Fourteenth Claim for Relief: Failure to Timely Pay Final Wages at Termination in Oregon;

Fifteenth Claim for Relief: Breach of Covenant of Good Faith and Fair Dealing;

Sixteenth Claim for Relief: Permanent Injunction in Oregon

*Id.*

#### **A. Federal Preemption of State Law**

The Fair Labor Standards Act (“FLSA”) is a federal employment statute establishing national wage and hour laws. 29 U.S.C. § 201 *et seq.* Further, the FLSA includes a “savings clause” that allows states to set a higher minimum wage or a lower maximum workweek than the FLSA standards. *Williamson v. Gen. Dynamics Corp.*, 208 F.3d 1144 (9th Cir. 2000) *cert. denied* 531 U.S. 929 (2000); 29 U.S.C. § 218(a).

Addus argues that Congress intended to preempt the entire area of wage and hour laws that fall outside of the savings clause. Dkt. 127 at 7. Addus bases its argument on the narrow language of the savings clause, Congressional intent cited in the legislative history of the act, and some Supreme Court case law on federal preemption. Dkt. 127 at 7-9; Dkt. 163 at 1-3. However, the 9<sup>th</sup> Circuit has held that the FLSA only preempts state laws that are less beneficial to the employee. *See Pac. Merch. Shipping Assoc. v. Aubry*, 918 F.2d 1409, 1425 (9th Cir.1990) (“There is no indication that Congress, in enacting the FLSA[ ], intended to preempt states from according more generous protection to [its] employees. [T]he purpose behind the FLSA is to establish a national floor under which wage protections cannot drop, not to establish absolute

1 uniformity in minimum wage and overtime standards nationwide at levels established in the  
2 FLSA.” (emphasis omitted)). Therefore, the Court should decline to grant summary judgment to  
3 defendant based on federal preemption.

#### 4 5 **B. Domestic Service Exception**

6 The Fair Labor Standards Act (“FLSA”) exempts from the minimum wage and overtime  
7 requirements persons "employed in domestic service employment to provide companionship  
8 services for individuals (who because of age or infirmity) are unable to care for themselves." 29  
9 U.S.C. § 213(a)(15). The Department of Labor's ("DOL") regulation defines the statutory term  
10 "domestic service employment" as "services of a household nature performed by an employee in  
11 or about a private home. . . of the person by whom he or she is employed." 29 C.F.R. § 552.3.  
12 Further, the DOL regulations explain that the exemption includes those "companionship" workers  
13 who are "employed by an . . . agency other than the family or household using their services." 29  
14 C.F.R. 552.109(a). Finally, the Supreme Court recently considered the question of the  
15 conflicting scope of 29 C.F.R. § 552.3 and 29 C.F.R. § 552.109(a). *Long Island Care at Home,*  
16 *Ltd. v. Coke*, 127 S.Ct. 2339 (June 11, 2007). In *Coke*, the Supreme Court held that the “third  
17 party statute”, § 552.109(a), controlled the scope of the domestic service exemption; and,  
18 therefore, a domestic service employee, employed by a third party employer rather than directly  
19 by the family of the person receiving care, is exempt from the requirements of the FLSA. *Id.* at  
20 2348.

21 Under Oregon law, domestic service employees are also exempt from Oregon laws  
22 establishing minimum employment conditions. *See* Or. Rev. Stat. §653.020(14). Further,  
23 “domestic service” is defined as “services of a household nature performed by an employee  
24 in or about a family home (permanent or temporary) of the person by whom the employee is  
25 employed...” Or. Admin. R. 839-020-0004(13). However, Oregon law does not have a third  
26 party regulation similar to 29 C.F.R. 552.109(a). *Id.* Thus, Oregon law defines the domestic  
27 service exemption more narrowly than federal law. Because Oregon’s domestic services  
28

1 exemption is more narrowly defined, Oregon law is more beneficial to domestic service  
2 employees. Therefore, Ms. Bell is not exempt from Oregon wage and hour laws because she is  
3 employed by Addus, a third party employer. The Court should decline to grant summary  
4 judgment to defendant based on either the federal or the Oregon domestic service exemption.

5 Washington Law is silent on the domestic service exemption. Because Washington Law  
6 does provide wage and hour requirements, Washington Law is more beneficial to domestic  
7 services employees. Therefore, Ms. Bell is not exempt from Washington employment laws. The  
8 Court should decline to grant summary judgment to defendant on Ms. Bell's Washington claims  
9 based on the domestic service exemption.

### 10 11 **C. Second Claim and Third Claim - Washington Meal Periods**

12 Under Washington law, employees are entitled to a meal period, WAC 296-126-092;  
13 however, an employer is not required to provide duty free meal periods. *White v. Salvation*  
14 *Army*, 118 Wn. App. 272, 274-275, 75 P.3d 990 (2003). Further, an employer may require an  
15 employee to remain at her post during the 30 minute meal period and respond to emergencies as  
16 long as the employer compensates the employee for all hours worked. *Iverson v. Snohomish*  
17 *County*, 117 Wn. App. 618, 72 P.3d 772, 773 (2003). "To make the [employer] pay again for a  
18 30-minute meal break simply because it did not schedule one is not supported by the regulation or  
19 the administrative policy." *White*, 118 Wn. App. at 274.

20 Ms. Bell claims that she was unable to take duty free meal periods and that she was not  
21 paid for the meal periods for which she was required to remain on duty. Dkt. 76 at 5. However,  
22 under Washington law, Addus may require Ms. Bell to remain on duty during her meal period as  
23 long as Addus compensated Ms. Bell for her time. Therefore, Ms. Bell may have a claim under  
24 Washington law for unpaid wages, but she does not have a claim for either failure to provide meal  
25 periods or failure to provide duty free meal periods.

26 The Court should grant the motion for summary judgment to defendant on the claims for  
27 failure to provide meal periods and failure to provide duty free meal periods.

**D. Fourth Claim - Failure to Pay All Wages Upon Termination in Washington**

Addus contends that because Ms. Bell was paid her final wages at the end of the established pay period, she cannot recover under RCW 49.48.010 (“When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period . . . .”). Dkt. 127 at 10.

Addus has not moved for summary judgment on Ms. Bell’s claim for unpaid wages due to Addus’ failure to provide rest periods. Dkt. 127. In addition, Ms. Bell has stated in her deposition that she is unsure whether she was paid for her meal periods. Deposition of Sharonda Bell (“Bell Dep.”) 37:18. If Addus still owes Ms. Bell for either the unpaid rest periods or the unpaid meal periods, then Addus did not pay Ms. Bell all wages due to her upon termination. Thus, there is a genuine issue of material fact as to whether Addus paid Ms. Bell all wages due upon termination.

The Court should decline to grant the motion for summary judgment to the defendant on the claim for failure to pay all wages due upon termination.

**E. Seventh Claim - Failure to Pay Wages in Oregon**

Addus moved for summary judgment on Ms. Bell’s Seventh Claim for Relief: Failure to Pay Wages in Oregon. Dkt. 127 at 17. Then, Ms. Bell had the opportunity to “identify with particularity the evidence that precludes summary judgment.” *Richards, supra*. Ms. Bell did not respond to Addus motion for summary judgment on this claim. Thus, the Court should grant summary judgment to defendant on the claim for failure to pay wages in Oregon.

**F. Eighth Claim - Failure to Pay Minimum Wage in Oregon**

Addus seeks summary judgment on Ms. Bell’s claim that Addus did not pay Ms. Bell the Oregon minimum wage. Dkt. 127 at 11. Oregon law states that “for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee



1 at wages computed at a rate lower than [the then applicable minimum wage rate].” ORS 653.025.

2 Further, the Oregon Administrative Regulations state that:

3 Employees shall be paid no less than the applicable minimum wage for all hours worked,  
4 which includes “work time” as defined in ORS 653.010(11). If in any pay period the  
5 combined wages of the employee are less than the applicable minimum wage, the  
6 employer shall pay, in addition to sums already earned, no less than the difference  
7 between the amounts earned and the minimum wage as prescribed by the appropriate  
8 statute or administrative rule.

9 Ms. Bell argues that the minimum wage should be calculated “for each hour of work” as stated in  
10 the statute. Dkt 127 at 13. On the other hand, Addus argues that the minimum wage should be  
11 calculated by the aggregate pay per hours worked for each pay period as outlined in the  
12 regulation. Dkt 163 at 7. In order for the Court to agree with Ms. Bell, the Court would have to  
13 completely disregard the Oregon Administrative Regulation. Ms. Bell cites no authority for this  
14 proposition. Dkt 163. Therefore, the Court should follow the calculation procedure given by the  
15 regulation.

16 First, Ms. Bell argues that Addus would not pay her if she submitted a time sheet to  
17 Addus that was not signed or initialed by a client. Dkt. 160 at 13. However, Ms. Bell was not  
18 “aware of” submitting any time sheet that was not initialed or signed by a client. Bell Dep. 99:6-  
19 11. Thus, Ms. Bell has presented no evidence to the Court that raises an issue of material fact  
20 relating to not being paid for work done for Addus.

21 Second, Ms. Bell argues that she was not properly compensated for the time she spent  
22 driving to and/or between clients. Dkt. 160 13-14. Ms. Bell argues that, based on the numbers  
23 from one pay stub, she would have had to average 60 miles per hour between clients in order to  
24 earn more than the minimum wage. *Id.* However, Ms. Bell argues that it is much more likely she  
25 could have only averaged 30 miles per hour while driving through the neighborhoods between  
26 clients. Dkt. 160 at 14. Ms. Bell has presented no other evidence to support her calculations.  
27 Thus, Ms. Bell’s allegation of being paid less than the minimum wage and speculation of driving  
28 speed between clients do not raise a material issue of fact that will defeat summary judgment.

The Court should grant summary judgment to defendant on the claim for failure to pay the  
minimum wage under Oregon law.

**G. Eleventh Claim - Failure to Pay for Missed Lunch Breaks in Oregon**

Under Oregon law, employees are entitled to a "...period of not less than 30 minutes during which the employee is relieved of all duties...". OAR 839-020-0050(1)(a). If an employer does not provide the meal period, then the commissioner of the Oregon Bureau of Labor and Industries ("BOLI") may enforce civil penalties against the employer. OAR 839-020-1010(1)(j). However, Ms. Bell does not cite to an Oregon statute that entitles her to a private right of action if her employer requires her to work through her meal period. Dkt 1 (complaint); Dkt 160 (response to summary judgment).

It is important to note that Ms. Bell does not argue that she was required to work through unpaid meal periods, but Ms. Bell argues that she is entitled to additional compensation because Addus required her to work through paid meal periods. Dkt. 160 at 14-15. However, under Oregon law, if Addus required Ms. Bell to work through her meal periods, then Addus may be subject to civil penalties. OAR 839-020-1010(1)(j). And, as cited above, Ms. Bell has not presented the Court with an authority for the proposition that she is entitled to a private right of action for Addus' alleged violation of the Oregon regulation. Thus, Ms. Bell has not met her burden of presenting to the Court evidence that will preclude summary judgment on the claim for failure to provide meal periods in Oregon.

The Court should grant the motion for summary judgment to defendant on the claim for failure to pay for missed meal periods in Oregon.

**H. Twelfth and Thirteenth Claims - Breach of Contract in Oregon**

Oregon statutes become terms of an employment contract only when the Oregon legislature intends them to. *Butterfield v. Oregon*, 163 Or. App. 227, 236, 987 P.2d 569 (1999). Ms. Bell does not cite an authority that the Oregon legislature intended the Oregon wage and hour laws to become terms of her alleged employment contract. Dkt. 1; Dkt 160. Further, Ms. Bell does not claim that the benefits provided by the Oregon wage and hour laws were considered during the negotiation of her alleged contract. *Id.* Thus, even if there was an employment

1 contract between Ms. Bell and Addus, Ms. Bell has not raised an issue of material fact that the  
2 statutorily required benefits were terms of the employment contract.

3 The Court should grant the motion for summary judgment to defendant on the claims for  
4 breach of contract in Oregon.

5  
6 **I. Fourteenth Claim - Failure to Timely Pay Final Wages Upon Termination in  
7 Oregon**

8 Oregon law states that “all wages earned and unpaid at the time of the discharge or  
9 termination become due and payable not later than the end of the first business day after the  
10 discharge or termination.” ORS 625.140(1). Ms. Bell worked for Addus in Oregon for ten days  
11 in June and July of 2005. Dkt. 160 at 16. Ms. Bell states that she was not allowed rest breaks  
12 during this period of employment. *Id.* Addus has not moved for summary judgment on Ms.  
13 Bell’s claim for relief for failure to provide rest periods in Oregon. Dkt. 127 at 18. Because  
14 Addus may owe Ms. Bell wages for missed rest breaks during her brief employment in Oregon,  
15 Ms. Bell has raised an issue of fact to prevent summary judgment on this claim. Thus, the Court  
16 should decline to grant summary judgment to defendant on the claim for failure to timely pay final  
17 wages upon termination in Oregon.

18  
19 **J. Fifteenth Claim - Breach of Covenant of Good Faith and Fair Dealing in Oregon**

20 Addus seeks summary judgment on Ms. Bell’s claim that Addus breached the covenant of  
21 good faith and fair dealing in the employment contract between the parties. Dkt. 127 at 16. Ms.  
22 Bell argues that what the “reasonable expectations of the parties” were at the time of contract is  
23 an issue of fact for trial. Dkt. 160 at 17. Further, Ms. Bell argues that her reasonable  
24 expectations were for Addus to comply with Oregon wage and hour laws. *Id.* However, when  
25 the duties of the employer are imposed by Oregon statutes, the employees remedies exist by virtue  
26 of the statutes and not by virtue of the relationship between the parties. *Butterfield*, 163 Or. App.  
27 at 235-236. Therefore, even if there was a employment contract between Ms. Bell and Addus,  
28 Ms. Bell’s remedies for breach of the Oregon wage and hour laws are not recoverable as contract

1 claims.

2 The Court should grant the motion for summary judgment to defendant on the claim for  
3 breach of the covenant of good faith and fair dealing.

4  
5 **K. Sixth and Sixteenth Claim - Injunctive Relief in Washington and Oregon**

6 The defendant contends that as a former employee, Ms. Bell does not have standing to  
7 seek injunctive relief. Dkt. 127 at 16. A plaintiff seeking injunctive or declaratory relief must  
8 demonstrate that she is "realistically threatened by a repetition of the violation." *Gest v. Bradbury*,  
9 443 F.3d 1177, 22 1181 (9th Cir. 2006) (internal quotation marks omitted) (emphasis in original).  
10 Because Ms. Bell is seeking damages for past violations, Ms. Bell is not realistically threatened by  
11 any Addus future violation of Washington or Oregon wage and hour law. Thus, the Court should  
12 grant the motion for summary judgment to defendant on both claims for injunctive relief.

13  
14 **IV. CONCLUSION**

15 The Court should grant the motion for summary judgment on Ms. Bell's Second, Third,  
16 Sixth, Seventh, Eighth, Eleventh, Twelfth, Thirteenth, Fifteenth, and Sixteenth Claims for Relief  
17 and deny the balance of the motion. The remaining Claims for Relief are:

18 First Claim for Relief: Failure to Provide Rest Periods in Washington

19 Fourth Claim for Relief: Failure to Pay Final Wages Upon Termination in  
20 Washington

21 Fifth Claim for Relief: Failure to Pay Overtime in Washington

22 Ninth Claim for Relief: Failure to Pay Overtime in Oregon

23 Tenth Claim for Relief: Failure to Pay Rest Periods in Oregon

24 Fourteenth Claim for Relief: Failure to Pay Final Wages Upon Termination in Oregon.

**IV. ORDER**

Therefore, it is hereby

**ORDERED** that the Defendant's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part as stated above.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

DATED this 14<sup>th</sup> day of August, 2007.



ROBERT J. BRYAN

United States District Judge